

IDAPA 37.03.09
Negotiated Rule Making
November 3, 2006

Negotiated Rule Making commenced on Friday, November 3, 2006 at 8 AM MST. This meeting was conducted using the University of Idaho's teleconferencing system, and stakeholders participated from locations in Twin Falls, Coeur d'Alene, Idaho Falls, and Boise. The complete meeting was recorded and is summarized below. Notes taken during the meeting are also included.

The Facilitator discussed and reviewed

1. The transition to IDWR rules. At the October 6 meeting, the Committee requested that the IDWR identify and outline the Department's requirements and priorities for the revision of IDAPA 37.03.09. At this meeting and at subsequent meeting, the IDWR proposed revisions to IDAPA 37.03.09 will be discussed.
2. The changes to the proposed revision to IDAPA 37.03.09. The November 3rd draft differs significantly from previous versions for two reasons:
 - a. Because of the extensive revision to the standards, the Office of the Administrative Rules Coordinator recommended repeal of the existing 37.03.09 and adoption of an entirely new standard. IDAPA 37.03.09 should be re-numbered and re-organized to comply with new standards imposed by the Legislature.
 - b. After renumbering IDWR staff internally reviewed the rule as a staff and made revisions. For these reasons, a revision to the October 6 draft using an underline or strikeout method to identify changes could not be prepared.
3. The committee suggested method to indicate strength or importance of proposed revisions. For example, a revision might be classified as a "1", indicating that the proposed revision was very important or very significant and would require additional evaluation or discussion. A "5" might indicate a revision that was of some interest, but not of critical importance.

Mr. Tony Hackett, President of Idaho Ground Water Association (IGWA), presented the IGWA comments to the November 3rd Draft Revision. The IGWA was concerned that new language was added outside of the presence of the committee and that the process requires that IDWR discuss and adopt changes to the language inside the committee. While seeking explanations for the changes, IGWA was committed to participate in the negotiations. IGWA also raised concerns about meeting locations and notices not being easy to find on the website.

Mr. Dave Tuthill, IDWR, stated that IDWR was not looking for consensus from the committee, but sought input in good faith. IDWR took comments and developed the November 3rd draft revision, and brought the draft back to the committee for input and comment. IDWR will draft future revisions with continued input from the committee and IGWA, and IDWR will bring the final draft proposal back to the committee before the proposed rule goes to the Water Board. IDWR is committed to making changes in an open and transparent manner.

Other IGWA members stated that they were surprised by the number of changes made to the previous draft. IGWA members also expressed concern that IDWR staff did not respect the professionalism of IGWA members. A concern was also raised that the broader drilling community had not received sufficient notice concerning rulemaking meetings, process and opportunities to comment on drafts. An IGWA stakeholder stated that regional meetings were originally proposed as part of the contract with Rocky Mountain Environmental and those meeting should be held.

IDWR committed to take recommendations for broader public notice and options for regional public meetings under consideration. In addition, IDWR strongly rejected the suggestion that IDWR

management would tolerate any IDWR staff person not treating the drilling community or an individual driller as a professional and with respect.

Section-by-Section Comments on November 3rd Proposed Revision to IDAPA 37.03.09

Below is a brief summary of the comments and discussion of the Definition of Terms in the November 3rd proposed revision.

- Scope of Standard, Line 29. No significant change from existing rule.
- Filter Pack. This definition and gravel pack would be revised in the next draft.
- In Line 93, there was extensive discussion concerning the requirement for NSF approval of well materials. IDWR stated that it was the Department's intent to require the use of manufactured products, in contrast to home-made or field-made products, and products that were contaminant-free. IDWR would clarify this definition in the next versions.
- At line 107, the committee suggested that those steps or procedures that would be implemented or required should not be in the definition of a term.
- At line 103, there was extensive discussion about the required percentage of solids in a bentonite mixture. IDWR suggested it would accept 25% solids, less than the proposed 30%.
- At Lines 97-98, there were two suggestions. First, the lower limit of granules need to be specified to prevent bridging from dust, and second, the method of screening should be moved to the rule on bentonite installation.
- Bottom Hole Temperature should be clarified, because there are statutory definitions of cold and low temperature geothermal wells.
- Casing should be clarified, because there are differences between cold and low temperature geothermal wells.
- Cement Grout should be clarified to differentiate between neat and cement grout.
- IDWR is revising the definition of closed loop heat exchange well and will present the revision at the next meeting.
- The definition of contamination was discussed, because naturally occurring groundwater chemicals might be contaminants. Removal or addition of heat in heat exchange wells might be contamination. The terms "less suitable for beneficial use" was confusing.
- The term disinfection was discussed. IDWR stated the definition was under revision and would be discussed at the next meeting.
- Drive Point wells was not a significant issue for the committee. It was classified as a "5".
- Dry Hole well was discussed extensively. It was IDWR's intent to limit the number of partially-completed wells or wells that are never used. This was classified as a "2".
- Formation Seal was discussed. After numerous comments, it was classified as "1", and the definition would be reviewed in December.
- The definition of hydro fracturing was discussed. Because up to 25% of wells in Kootanei County are hydro fractured, IDWR would review and revise the definition.
- The term liner was discussed extensively, because pipes might be liners or casing, depending upon the situation and on whether PVC is installed. This was classified as "1" and IDWR would bring revised definitions to the December meeting.
- Pitless Adapters was classified as a "1", because pitless adapters may leak and contaminate the resource. The committee moved to the next topic, but the issue was not resolved.
- Monitor Wells were discussed, and the requirement for design by PE or PG is a statutory requirement and is not negotiable.
- Neat Cement was discussed, and the committee suggested it duplicated earlier text.
- The definition of PVC was discussed, because the differences between liner and casing. The question of HDPE was raised as a material for liner or casing that should be considered.

- Minor changes were suggested for the definitions of surface seal, surface casing, and unconsolidated.
- Changes were made to the definition of well to include ground source well and recycling wells.
- The term well designer was deleted, because IDWR believes it can only regulate well construction and well drillers.

Mr. Chuck Galloway introduced Mr. Tom Neace, PG. Mr. Neace will leave Idaho Department of Environmental Quality to join the Idaho Department of Water Resources. Mr. Neace's first assignments will include reviewing enforcement policy across the state. As a reminder, Mr. John Sharkey has replaced John Carlson on the committee. Mr. Sharkey can be reached at: 208-897-4934, John.Sharkey@idwr.idaho.gov.

IGWA stated that it has provided written comments to IDWR regarding those parts of the proposed revision that were not reviewed in the meeting today.

The Facilitator committed to improving agendas, web site and meeting notices.

The meeting adjourned at 4:00 PM.

Next meeting and schedule.

The Committee is scheduled to meet on December 1, 2006, using the University of Idaho video conferencing facilities.